



Appeal Decision

Site visit made on 15 August 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal Ref: APP/A5270/C/21/3266918

Premises known as Sippar, 44B Bideford Avenue, Perivale, Ealing, UB6 7PP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Waleed Alseadi against an enforcement notice issued by London Borough of Ealing.
 - The notice, numbered 20EN1065(1), was issued on 4 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission: The material change of use of the premises to a mixed use café and shisha lounge.
 - The requirements of the notice are A. Cease the café use of the premises; B. Cease the shisha lounge use of the premises; C. Remove the ground floor front extension in its entirety; D. Remove from the land all items that relate to the unauthorised use, including the seating, tables, shisha pipe, heaters, shisha tobacco, televisions, refrigerators, the coffee machine, and counter/service area; E. Remove the kitchen facilities, worktops and drainage connections from the premises; F. Remove any internal partitions that facilitate the unauthorised use of the premises; and G. Remove all resultant debris.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f), (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Applications for costs

2. Applications for costs were made by the appellant and the Council and are dealt with in a separate decision letter.

Preliminary Matters

3. At the site visit I was informed the business had changed hands and the new owner was Mr Waleed Alseadi. Subsequently a consent to proceed letter from the original appellant, Mr Haidar Abu-Nayla, has been received and the appeal is proceeding in Mr Alseadi's name.

Background to the Appeal

4. The site occupies the ground floor of a two-storey building with residential flats above. Otherwise it is surrounded by commercial or industrial uses and lies within a Strategic Industrial Location (SIL). The site has a long history but essentially it was operated from 2003 as a car repair business. In late 2014 the Sippar café began until 2017 when it ceased trading. The previous

appellant took over the premises in 2018 and they re-opened as a café/restaurant/snack bar but with shisha smoking in the front area.

5. Meanwhile in 2016 the front extension was given planning permission, but it was noted on that permission that it related only to the building not the unlawful use. The first floor flats were also unlawful and are subject to a live enforcement notice. An appeal against that notice was dismissed in 2020. In June 2020 the appellant enquired about opening as a shisha lounge. By now the building had been extensively remodelled. He was told that smoking would not be permitted on the premises. It was clear the use was continuing so the enforcement notice was issued.

The Appeal on Ground (b)/(c)

6. This ground is that the matters alleged have not occurred. It is clear from the above resume that the ground floor is being used as a café and shisha lounge and the Council have further evidence from various visits from 2014 onwards that the use has been ongoing from then. So the matters alleged have clearly happened.
7. Although there is no ground (c) appeal the appellant argues he is operating with the benefit of planning permission. In this case it is reference 164576(FUL). This was a permission for a front extension and was allowed in 2016. However an informative on the planning permission makes it clear the permission applies only to the structure, not to the unlawful use which would require a separate application. Such an application was made before the extension application but was withdrawn. There is therefore no planning permission authorising the change of use. In any event, the Council argue that 164576 was never implemented as what was built is nothing like that granted planning permission and so that permission has now lapsed. For both reasons there can be no success on ground (c).

The Appeal on Ground (d)

8. This ground is that the matters alleged are immune from enforcement through the passage of time. The appellant is under the misapprehension that the time limit is four years, but that is only for buildings or a change of use to a dwelling. Any other form of development, such as a change of use to a restaurant, is 10 years. The evidence is that the use began after the Council visit in 2014, when there are advertisements on the building announcing the Sippar café and supermarket is coming soon. No evidence has been provided of a change of use prior to that date so the ground (d) is bound to fail.

The Appeal on Ground (f)

9. The purpose of the notice is to remedy the breach that has been identified. No lesser steps have been identified other than a general argument that no harm is being caused. However, this is more properly for a ground (a) appeal which has not been made and as no fee has been paid cannot be entertained now. The requirements are to cease the uses and remove all the internal works that facilitate the use, which is entirely reasonable. Requirement C also requires the demolition of the front extension. I have no reason to doubt the Council's argument that the extension is not authorised by planning permission 164576 and it seems to have been built solely to facilitate the unauthorised

café/restaurant/shisha use. Consequently it is reasonable to require its removal.

The Appeal on Ground (g)

10. No argument has been made for extra time and three months is sufficient to cease the use, remove the extension and the fixtures and fittings.

Conclusion

11. I shall dismiss the appeal and uphold the notice.

Simon Hand

INSPECTOR

